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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,204	04/24/2001	Nathan S. Lewis	06618-709001/CIT 2976-CIP	5403
7590 02/23/2005			EXAMINER SINES, BRIAN J	
SCOTT C. HARRIS Fish & Richardson P.C. Suite 500 4350 La Jolla Village Drive San Diego, CA 92122			ART UNIT 1743	PAPER NUMBER
DATE MAILED: 02/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/842,204

Applicant(s)

LEWIS ET AL.

Examiner

Brian J. Sines

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-73 is/are pending in the application.
- 4a) Of the above claim(s) 53-57, 72 and 73 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-52 and 66-71 is/are allowed.
- 6) ☒ Claim(s) 58 and 61-65 is/are rejected.
- 7) ☒ Claim(s) 59 and 60 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/24/2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION***Election/Restrictions***

Claims 53 – 57, 72 and 73 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/14/2004.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

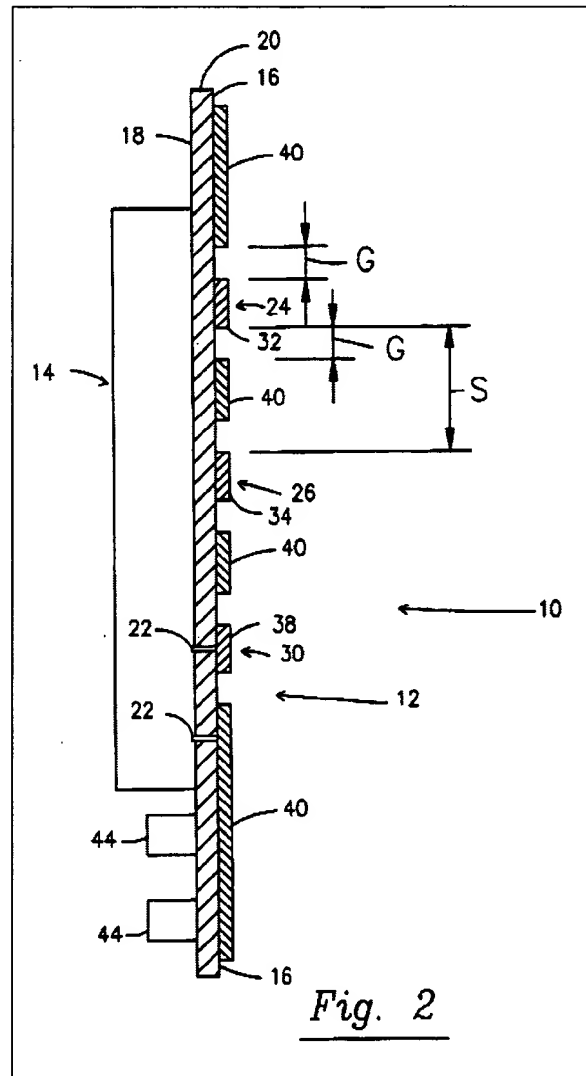
A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 58 & 61 – 65 are rejected under 35 U.S.C. 102(e) as being anticipated by Bailey (U.S. Pat. No. 5,777,483 A). Bailey teaches a sensing device for detecting contaminants in a liquid, such as water (see Abstract). Bailey anticipates the claimed apparatus structure comprising a substrate (substrate panel 20) having a first face and a second face; one or more sensors (e.g., sensing means 12 comprising capacitive members 24, 26 & 30) in contact with the first face; and including one or more channels (plate through holes 20) extending from the first face to the second face (see figure 2; col. 3, lines 35 – 65). The Courts have held that apparatus claims must be structurally distinguishable from the prior art in terms of structure, not function. See *In re Danley*, 120 USPQ 528, 531 (CCPA 1959); and *Hewlett-Packard Co. V. Bausch and Lomb, Inc.*, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). The Courts have held that the manner of

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operating an apparatus does not differentiate an apparatus claim from the prior art, if the prior art apparatus teaches all of the structural limitations of the claim. See *Ex Parte Masham*, 2 USPQ2d 1647 (BPAI 1987) (see MPEP § 2114).



Allowable Subject Matter

1. Claims 1 – 52 and 66 – 71 are allowed.

The following is an examiner's statement of reasons for allowance:

Regarding claim 1, the cited prior art neither teach nor fairly suggest the claimed flow-through analysis apparatus comprising: a sensor array having a first face and a

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second face, wherein the sensor array comprises one or more sensors and one or more fluid channels extending from the first face to the second face; a fluid flow system; and processor.

Regarding claim 27, the cited prior art neither teach nor fairly suggest the claimed methodology for detection utilizing recited flow-through analysis apparatus comprising a sensor array having a first face and a second face, wherein the sensor array comprises one or more sensors and one or more fluid channels extending from the first face to the second face and including the method step of exposing the sensor array to a fluid flow including an analyte under conditions sufficient to create a pressure differential between the first and second faces of the sensor array.

Regarding claim 66, the cited prior art neither teach nor fairly suggest the claimed sensor array apparatus comprising the recited sensor configuration and including the one or more channels extending along one or more of the substrate faces from the first face of the sensor array to the second face of the sensor array.

2. Claims 59 and 60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 59, the cited prior art neither teach nor fairly suggest the further incorporation within the Bailey apparatus channels which are configured such that upon introduction of a fluid to the sensor array a pressure differential is created between the first and second surfaces of the substrate.

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Regarding claim 60, the cited prior art neither teach nor fairly suggest the further incorporation within the Bailey apparatus a substrate comprising a microporous material and channels comprising a plurality of pores in the substrate.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

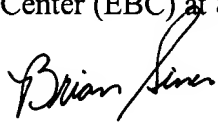
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: The additional cited prior teach various sensing systems utilizing an array of sensors.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Sines, Ph.D. whose telephone number is (571) 272-1263. The examiner can normally be reached on Monday - Friday (11 AM - 8 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Brian Siver". The signature is written in a cursive, flowing style.